

---

**SUBSTITUTE HOUSE BILL 3139**

---

**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Conway, Wood, Green, Moeller, Simpson, and Ormsby)

READ FIRST TIME 02/05/08.

1       AN ACT Relating to industrial insurance benefits on appeal;  
2 amending RCW 51.52.050; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       **Sec. 1.** RCW 51.52.050 and 2004 c 243 s 8 are each amended to read  
5 as follows:

6       (1) Whenever the department has made any order, decision, or award,  
7 it shall promptly serve the worker, beneficiary, employer, or other  
8 person affected thereby, with a copy thereof by mail, which shall be  
9 addressed to such person at his or her last known address as shown by  
10 the records of the department. The copy, in case the same is a final  
11 order, decision, or award, shall bear on the same side of the same page  
12 on which is found the amount of the award, a statement, set in black  
13 faced type of at least ten point body or size, that such final order,  
14 decision, or award shall become final within sixty days from the date  
15 the order is communicated to the parties unless a written request for  
16 reconsideration is filed with the department of labor and industries,  
17 Olympia, or an appeal is filed with the board of industrial insurance  
18 appeals, Olympia(~~(+ PROVIDED, That)~~). However, a department order or  
19 decision making demand, whether with or without penalty, for repayment

1 of sums paid to a provider of medical, dental, vocational, or other  
2 health services rendered to an industrially injured worker, shall state  
3 that such order or decision shall become final within twenty days from  
4 the date the order or decision is communicated to the parties unless a  
5 written request for reconsideration is filed with the department of  
6 labor and industries, Olympia, or an appeal is filed with the board of  
7 industrial insurance appeals, Olympia.

8 (2)(a) Whenever the department has taken any action or made any  
9 decision relating to any phase of the administration of this title the  
10 worker, beneficiary, employer, or other person aggrieved thereby may  
11 request reconsideration of the department, or may appeal to the board.  
12 In an appeal before the board, the appellant shall have the burden of  
13 proceeding with the evidence to establish a prima facie case for the  
14 relief sought in such appeal(~~(:—PROVIDED, That)~~).

15 (b) An order by the department awarding benefits shall become  
16 effective and benefits due on the date issued. Subject to (b)(i) and  
17 (ii) of this subsection, if the department order is appealed the order  
18 shall not be stayed pending a final decision on the merits unless  
19 ordered by the board. Any party may move for a stay of the order on  
20 appeal, in whole or in part. The motion must be filed within fifteen  
21 days of the order granting appeal. The board shall conduct an  
22 expedited review of the claim file provided by the department as it  
23 existed on the date of the department order. The board shall issue a  
24 final decision within twenty-five days of the filing of the motion for  
25 stay or the order granting appeal, whichever is later. The board's  
26 final decision may be appealed to superior court in accordance with RCW  
27 51.52.110. The board shall grant a motion to stay if the moving party  
28 demonstrates that it is more likely than not to prevail on the facts as  
29 they existed at the time of the order on appeal. The board shall not  
30 consider the likelihood of recoupment of benefits as a basis to grant  
31 or deny a motion to stay.

32 (i) If upon reconsideration requested by a worker or medical  
33 provider, the department has ordered an increase in a permanent partial  
34 disability award from the amount reflected in an earlier order, the  
35 award reflected in the earlier order shall not be stayed pending a  
36 final decision on the merits. However, the increase is stayed without  
37 further action by the board pending a final decision on the merits.

1        (ii) If a self-insured employer appeals an order setting the  
2 claimant's time loss rate, the claimant shall receive any time loss or  
3 pension benefits based upon the rate calculation that the employer most  
4 recently submitted to the department and payment of benefits at this  
5 rate shall not be stayed pending a final decision on the merits.  
6 However, payment of time loss or pension benefits at the increased rate  
7 in the order on appeal is stayed without further action by the board  
8 pending a final decision on the merits.

9        (c) In an appeal from an order of the department that alleges  
10 willful misrepresentation, the department or self-insured employer  
11 shall initially introduce all evidence in its case in chief. Any such  
12 person aggrieved by the decision and order of the board may thereafter  
13 appeal to the superior court, as prescribed in this chapter.

14        NEW SECTION. Sec. 2. This act applies to orders issued on or  
15 after the effective date of this act.

--- END ---